

Chapter 17
Category 11I
Low-Income Units Occupied by
Nonqualified Full-Time Students

Definition

This category is used to report LIHC units occupied by nonqualified full-time student households. A unit is *not* considered to be occupied by low-income individuals if all the occupants of such unit are students, no one of whom is entitled to file a joint return.¹

**Defining
“Student”**

IRC §151(c)(4) defines, in part, a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii). Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.

**Units
Comprised
Entirely of Full-
Time Students**

Units comprised of full-time students (no one of whom is entitled to file a joint return) do not qualify as low-income units. However, there are exceptions as outlined in IRC §42(i)(3)(D). This section provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied

1. by an individual who is:
 - I. a student receiving assistance under Title IV of the Social Security Act, or
 - II. a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws, or
2. entirely by full-time students if such students are
 - I. single parents with children all of whom are students and such parents and children are not dependents (as defined in IRC §152) of another individual, or
 - II. married and file a joint return.

In the case of a single parent with children, the legislative history explains that *none* of the tenants (parent or children) can be a dependent of a third party. See S. Prt. No. 103-37, 103d Cong., 1st Sess. 74 (1993).

¹ H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89.

In Compliance

A unit is in compliance when (1) it is not occupied entirely by full-time students at qualifying educational organizations for five or more months during the calendar year in which the taxable year of the taxpayer begins, or (2) it is occupied entirely by full-time students that meet one of the exceptions identified in IRC §42 (i)(3)(D). Also, a married couple that is *entitled* to file a joint tax return, but has not filed one, still satisfies the exception under IRC §42(i)(3)(D)(ii)(II).

Example 1: Newly Married Students

A recently married full-time student couple is looking for housing. The couple is income qualified, but they have not yet filed their first tax. Even if the couple does not file a joint tax return, they are still entitled to file a joint return and thus satisfy the exception under IRC §42(i)(3)(D)(ii)(II).

Example 2: Full Time Students

Two students attending college full time and working part time share a low-income housing unit with a third person who works full time and is not enrolled at the college. The students combined incomes qualify them as a household for low-income housing.

Example 3: Qualified Educational Organization

An individual is participating in an accreditation program at a research facility. There is no tuition or degree, but the individual receives a small stipend for services provided and an accreditation certificate upon completion of the program. The program is similar to a doctor's residency. The research facility is not an educational organization and the individual would qualify for low-income housing.

Out of Compliance

A unit is out of compliance when (1) it is occupied entirely by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins, or (2) full-time students do not meet one of the exceptions identified in IRC §42 (i)(3)(D). The out of compliance date is the first day of the fifth month during the calendar year that the full-time student attended a qualifying educational organization.

Example 1: Continuing Student Status

An otherwise qualifying low-income individual occupies a unit in June. She attended a qualifying educational organization for two months during the calendar year prior to the date she occupied the unit. From September through December of the calendar year she again attends a qualifying educational organization.

The unit is out of compliance on November 1, the first day of the fifth month she attended a qualifying educational organization during the calendar year.

Back in Compliance

The unit is back in compliance when is no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions under IRC §42(i)(3)(D).

References

1. IRC §151(c)(4).
2. IRC §170(b)(1)(A)(ii).
3. IRC §42(i)(3)(D).